

IN THE
SUPREME COURT OF INDIANA
ORDER AMENDING TAX COURT RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the *Table of Contents, Rules 1, 2, 3, 4, 5, 6, 9, 16, 17, 18, 19, and 20, and the Notice of Appearance Form* of the *Indiana Tax Court Rules* are amended to read as follow, and a *Verified Petition for Judicial Review of a Final Determination of the Indiana Board of Tax Review* form is added to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 1. Scope of the rules

These rules govern the procedure and practice in all actions jurisdictionally cognizable in the Indiana Tax Court. They shall be construed to secure the just, speedy and inexpensive determination of every action. Except to the extent these rules are clearly inconsistent with the Indiana Rules of Trial Procedure (“Trial Rules”), those Trial Rules shall apply to actions in the Tax Court, but nothing herein or in the Trial Rules shall be deemed to extend the jurisdiction of the Tax Court with respect to persons, actions, or claims over which it does not otherwise have authority. In the case of an appeal from a determination of a probate court, the Indiana Rules of Appellate Procedure shall apply.

Rule 2. One form of action

(A) In the Indiana Tax Court, there shall be one form of action in the nature of a civil action to be known as an “original tax appeal.”

(B) An original tax appeal is an action that arises under the tax laws of the State of Indiana by which an initial judicial appeal of a final determination of the Department of State Revenue ~~or, the State~~ Indiana Board of Tax Commissioners Review, or the Department of Local Government Finance is sought.

Rule 3. Commencement of an action

(A) **Appeals from final determinations of the Department of State Revenue.** An original tax appeal from a final determination of the Department of State Revenue is commenced by filing a petition in the Tax Court.

(B) **Appeals from final determinations of the Indiana Board of Tax Review.** An original tax appeal from a final determination of the Indiana Board of Tax Review is commenced by filing a verified petition in the Tax Court. The petition shall set forth the following:

(1) the name and mailing address of the petitioner;

(2) the mailing address of the Indiana Board of Tax Review;

(3) identification of the final determination of the Indiana Board of Tax Review at issue, together with a copy, summary, or brief description of the final determination;

(4) identification of all persons, as defined under IC 4-21.5-1-11, that were parties to any proceedings of the Indiana Board of Tax Review that led to its final determination;

(5) specific facts to demonstrate that the petitioner has standing to obtain judicial review of the final determination of the Indiana Board of Tax Review, has exhausted all applicable remedies, has timely filed the petition, and has met any other statutory conditions for the availability of judicial review;

(6) specific facts to demonstrate that the petitioner has been prejudiced by one or more grounds which provide the basis for a grant of relief under applicable law;

(7) at the election of the petitioner, a request that the Indiana Board of Tax Review prepare a certified copy of the agency record; and

(8) a request for relief stating the type and extent of relief requested.

The petition shall be verified under Trial Rule 11(B). A sample petition for an original tax appeal from a final determination of the Indiana Board of Tax Review is included in the Appendix to these rules. If the petitioner does not include in the petition a request that the Indiana Board of Tax Review prepare a certified copy of the agency record, the petitioner shall file a separate request for such record under Section (E) of this rule.

(C) Appeals from final determinations of the Department of Local Government Finance. An original tax appeal from a final determination of the Department of Local Government Finance is commenced by filing a petition in the Tax Court.

(D) Copies of petitions. Copies of the petition required under Section B of this rule shall be served upon the following:

(1) the chairperson of the Indiana Board of Tax Review;

(2) the Attorney General;

(3) each party to the administrative proceedings before the Indiana Board of Tax Review that led to the final determination under review;

(4) if the administrative proceeding before the Indiana Board of Tax Review involved an appeal from a determination of a county property tax assessment board of appeals, the secretary of such county property tax assessment board of appeals.

A petitioner complies with this rule by serving a copy of the petition in the manner provided by Trial Rule 5(B). Copies of the petition shall be served upon public officers only in their official capacities.

(E) Filing the record for judicial review. In original tax appeals filed under Section (B) of this rule, the petitioner shall request the Indiana Board of Tax Review to prepare a certified copy of the agency record within thirty (30) days after filing the petition. A request included as part of the petition filed under Section (B)(7) of this rule satisfies this requirement. The petitioner shall transmit a certified copy of the record to the Tax Court within thirty (30) days after having received notification from the Indiana Board of Tax Review that the record has been prepared.

(F) Enjoining the collection of a tax. If the petitioner wishes to enjoin the collection of a tax pending the original tax appeal, there must be included with the original tax appeal a petition to enjoin the collection of the tax, which petition must include a summary of:

- (1) the issues that the petitioner will raise in the original tax appeal; and
- (2) the equitable considerations for which the Tax Court should order the collection of the tax to be enjoined.

Rule 4. Jurisdiction over ~~defendants~~— respondents and Service of Process

(A) Appeals from final determinations of the Department of State Revenue and the Department of Local Government Finance.

(1) Notwithstanding anything to the contrary herein, the Tax Court acquires jurisdiction over the Department of State Revenue or the ~~State Board of Tax Commissioners in an original tax appeal~~ Department of Local Government Finance upon the filing of a petition with the clerk of the Tax Court seeking to set aside a final determination of either of such state agencies, as the case may be. The clerk of the Tax Court shall promptly transmit copies of a petition filed in the Tax Court to the Attorney General and to the state agency named as the ~~defendant~~ respondent in such petition and shall state in accompanying transmittal letters: (1) the date on which the petition was filed; (2) the date on which the petition is being mailed to the Attorney General and the ~~defendant~~ respondent state agency; and (3) the time within which these rules require a responsive pleading. Nothing in this rule shall relieve a party from complying with the statutory requirements for bringing an original tax appeal.

~~(B) It shall not be necessary to serve summons on the Attorney General~~

(2) In original tax appeals of final determinations of the Department of State Revenue or the ~~Board of Tax Commissioners~~ Department of Local Government Finance, it shall not be necessary to serve summons on the Attorney General, the Department of State Revenue, or the Department of Local Government Finance. Service of summons in accordance with the Trial Rules shall be required for the Tax Court to acquire jurisdiction over any other persons; such service shall be made as provided in Trial Rule 4.11.

(B) Appeals from final determinations of the Indiana Board of Tax Review.

(1) In original tax appeals of final determinations of the Indiana Board of Tax Review, the Tax Court acquires jurisdiction over a party or person who under these rules commences or joins in the original tax appeal, is served with summons or enters an appearance, or who is subjected to the power of the Tax Court under any other law.

(2) In original tax appeals initiated by taxpayers, the named respondent shall be as follows:

- (a) Except as otherwise provided herein, the named respondent shall be the local

governmental official or entity that made the original assessment valuation, exemption determination, or other determination under the tax laws that was the subject of the proceedings before the Indiana Board of Tax Review.

(b) In original tax appeals involving enterprise zone credit determinations, the county auditor who made the determination shall be the named respondent.

(c) In original tax appeals of final determinations of the Indiana Board of Tax Review in which the Department of Local Government Finance was a party to the administrative proceedings, the Department of Local Government Finance shall be a named respondent, and, if a local government official who made an original determination under review was a party to the administrative proceeding before the Indiana Board of Tax Review, such local government official shall also be a named respondent.

(3) In original tax appeals initiated by a government official or entity, the named respondent shall be the taxpayer who was a party to the proceeding before the Indiana Board of Tax Review.

(4) Service of summons shall be required only with respect to the named respondent and any other person whom the petitioner seeks to join as a party. If the Department of Local Government Finance is a named respondent, service of summons shall be made upon the Commissioner of the Department of Local Government Finance. Service of summons shall be made in accordance with the Trial Rules.

(C) Public Officers in their Official Capacities. Public officers shall only be made parties to original tax appeals in their official capacities.

(D) Substitution of Parties.

(1) When a public officer who is made a party to an original tax appeal in his or her official capacity dies, resigns or otherwise no longer holds the public office, the officer's successor is automatically substituted as a party.

(2) A party shall, by notice filed with the Clerk, advise the Court of the succession in office of any party. The failure of any party to file a notice shall not affect the party's substantive rights.

(3) The death or incompetence of any party on appeal shall not cause the original tax appeal to abate. Successor parties may be substituted for the deceased or incompetent parties.

Rule 5. Time

Time for Response to Petition. In a case in which the clerk of the Tax Court has served a petition in an original tax appeal without service of summons, the period for filing a response to such petition by the State Agency so served shall be thirty (30) days after the mailing of the clerk's transmittal letter. In all other cases, Trial Rule 6 shall govern a case governed by Rule 4(B), the period for filing a response to a petition shall be thirty (30) days after the service of the petition and summons on a named respondent.

Rule 6. Joinder of persons needed for just adjudication and Intervention

(A) Joinder of Taxpayer in Tax Court Appeals by Government Organization or Representative. In an original tax appeal in the Tax Court brought by a governmental organization or ~~governmental~~ official representative, any person or persons whose liability for, or right to a refund of, taxes would be directly affected by the outcome of such appeal ~~shall be joined as a party or may intervene if not so joined~~ may intervene in the action pursuant to Trial Rule 24 if not already named as a respondent or joined under Trial Rule 20.

(B) Right of Intervention. The Department of Local Government Finance shall have the right to intervene in original tax appeals of final determinations of the Indiana Board of Tax Review when the interpretation of its rules is at issue. This right of intervention shall not extend to settlement of the litigation between the original parties to the tax appeal unless the Department of Local Government Finance was a party to the action before the Indiana Board of Tax Review.

...

Rule 9. Subpoena

(A) Subpoena for Taking Depositions--Place of Examination. Proof of service of a notice to take a deposition as provided in Trial Rules 30(B) and 31(A) constitutes a sufficient authorization for the issuance by the Tax Court or by the clerk of court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Trial Rule 26(B), but in that event the subpoena will be subject to the provisions of Trial Rules 26(C) and 45(B).

(B) Subpoena for a Hearing or Trial. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the Tax Court when requested, or, in the case of a subpoena for the taking of a deposition, by the clerk of the Tax Court or by the clerk of the court in the county in which the deposition is being taken. A subpoena may be served at any place within the state; and when permitted by the laws of the United States, this or another state or foreign country, the Court upon proper application and cause shown may authorize the service of a subpoena outside the state in accordance with and as permitted by such law.

(C) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a in contempt of the Tax Court or the court from which the subpoena was issued, or

of the court of the county where the witness was required thereunder to appear or act. The attendance of all witnesses when duly subpoenaed, and to whom fees have been paid or tendered as required by law may be enforced by attachment.

...

Rule 16. Small Tax Cases

(A) General. The Small Tax Case Rules set forth the special provisions which are to be applied in the Indiana Tax Court to small tax cases as required by IC 33-3-5-12. Except as otherwise provided in the Small Tax Case Rules, the Indiana Rules for Small Claims are also applicable to such cases. To the extent not inconsistent therewith, the Indiana Tax Court Rules will apply. The term "small tax case" means a case which involves ~~either a claim for refund from the Department of State Revenue that does not exceed \$5,000 for any year or an appeal of a final determination of assessed value made by the State Board of Tax Commissioners that does not exceed \$15,000 for any year.~~

(B) Notice of Claim. The notice of claim to be used under Small Claims Rule 2 shall contain:

- (1) the name of the Tax Court;
- (2) the name, address and telephone number of claimant;
- (3) a designation of the type of tax the claim involves;
- (4) a statement of the taxable period involved ~~or, in the case of a claim relating to property taxes, the effective date of any assessment at issue;~~
- (5) a brief statement of the nature of the claim;
- (6) a statement of the amount of tax at issue ~~or, in the case of a claim relating to property taxes, the assessed value of the property at issue;~~ and
- (7) any additional information which may facilitate proper service or processing of the claim.

(C) Manner of Service. For the purpose of service, the notice of claim shall also be considered to be the summons. A copy of the notice of claim shall be served upon the Attorney General by registered or certified mail, return receipt requested.

(D) Appearances for Governmental Defendants. The Attorney General shall be deemed to have entered an appearance for and on behalf of the governmental defendant or defendants.

Rule 17. Judgment

~~(E) Judgment~~

All judgments shall be incorporated in written memorandum decisions by the court. Unless

specifically designated “For Publication,” such written memorandum decisions shall not be published and shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case. Judgment shall be subject to review as prescribed by relevant Indiana rules and statutes.

Rule ~~17~~ 18. Special rules

The judge of the Tax Court may from time to time make and amend rules governing practice before it not inconsistent with these rules. In all cases not provided for by rule, the Tax Court may regulate its practice in any manner not inconsistent with these rules. Two (2) copies of all special rules shall be furnished to the clerk and to the Office of the Administrator of State Courts.

Rule ~~18~~ 19. Effective date

These rules shall be effective as of July 1, 1986, and they shall govern all proceedings in the Tax Court, whether originally commenced in the Tax Court or in another court.

Rule ~~19~~ 20. Title

These rules may be known as the Indiana Tax Court Rules.

NOTICE OF APPEARANCE

IN THE
INDIANA TAX COURT
~~CASE NUMBER~~
Case No.

_____))
_____))
Petitioner,)
_____))
v.)
~~INDIANA DEPARTMENT OF STATE~~)
~~REVENUE/STATE BOARD OF TAX~~)
~~COMMISSIONERS (strike one),~~)
_____))
_____))
Respondent.)

NOTICE OF APPEARANCE

[Party/amicus name], [by counsel/pro se], ~~pursuant to Ind. Appellate Rule 2.1~~, serves notice of the following [change in] information for purposes of this [appeal/review]:

1. [If this notice is filed by the party initiating the appeal or review, the first rhetorical paragraph must designate the type of tax that is the subject of this appeal. If a review of property tax is sought, specify whether personal property taxes or real property taxes are the subject. Also specify the issue concerned in the appeal, i.e. whether the appeal is concerned with an assessed value or other issue.]
2. [The next rhetorical paragraph must state the relationship of the filing party to the appeal or review; i.e., whether the filing party is the petitioner, respondent, an entity seeking amicus curiae status, or a party not participating in the appeal but seeking to be placed on the service and notice list, etc. Note that any party seeking amicus curiae status must indicate whether amicus curiae status has been previously sought and either granted or refused in connection with this proceeding.]
3. [The next rhetorical paragraph must state the date of the final determination by the administrative agency involved. The character of the determination should also be stated. For example: "This cause is an appeal from a final determination entered by the [agency] on January 2, 1995."]
4. [As applicable, the name, address, attorney number, telephone number, FAX number, and

computer address of the attorney representing the party filing the appearance form. Note that the names and addresses on the appearance form will be used for service from the Clerk's office and will be the names and addresses printed on any written opinion issued by the Indiana Tax Court. A party is reminded of its ongoing obligation to advise the Indiana Tax Court of any changes in appearance information.]

5. [Which, if any, of the listed attorneys are requesting service of orders and opinions by FAX pursuant to Ind.Appellate Rule ~~12(F)~~26. Service by FAX must be requested in writing on an appearance form.]

6. [As applicable, the name, address, and telephone number of the party filing the appearance form.]

7. [As applicable (i.e. if an appeal from a probate or trial court), or if not previously provided by another party: the name of the lower tribunal from which the appeal or review is sought, the lower cause number, and the name of the presiding judge or agency.]

8. [~~As applicable, and if not provided by another party: the date the praecipe was filed.~~]

9. [As applicable, and if not provided by another party: the name, address, and telephone number of the court reporter responsible for the preparation of the transcript.]

signature _____
Attorney or pro se litigant's name,
address and telephone information,
attorney number, party represented

CERTIFICATE OF SERVICE

[The name of each party served with this form should be identified, along with the date and method of service, and the name and signature of the person responsible for initiating service.]

IN THE
INDIANA TAX COURT

Case No. _____

)	
)	
Petitioner,)	
)	
v.)	
)	
)	
Respondent.)	

VERIFIED PETITION FOR JUDICIAL REVIEW
OF A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

The Petitioner, [Name of Petitioner], [with counsel/pro se], (“Petitioner”), for its Petition against Respondent, [Name of Respondent], brings this petition for judicial review of a final determination of the Indiana Board of Tax Review (“Board”) and in support thereof alleges as follows:

1. [The name and mailing address of the Petitioner].
2. [The name and mailing address of the Board].
3. [Identification of the Board’s final determination at issue, together with a copy, summary, or brief description of the final determination (the “Board’s Determination”).]
4. [Identification of all persons, as defined in IC 4-21.5-1-11, that were parties to any proceedings that led to the final determination of the Indiana Board of Tax Review].
5. [Specific facts to demonstrate that the Petitioner is entitled to obtain judicial review of the Board’s Determination under IC 4-21.5-5-2 including:
 - a. The standing of the Petitioner under IC 4-21.5-5-3.
 - b. The exhaustion of the Petitioner’s administrative remedies under IC 4-21.5-5-4.
 - c. The timeliness of the Petitioner’s Petition under the applicable statutes.
 - d. A statement that the Petitioner shall transmit a certified record of the

- administrative proceedings to the Indiana Tax Court within thirty (30) days after having received notification from the Board that the certified record has been prepared in accordance with IC 6-1.1-15-6.
- e. Any other statutory conditions for the availability of judicial review].

6. [At the election of the petitioner, a request that the Indiana Board of Tax Review prepare a certified copy of the agency record. If the petitioner does not include the request in the petition, the petitioner must file a separate request for the record under Rule 3(E).]

7. [Specific facts to demonstrate that the Petitioner has been prejudiced by one or more of the grounds described in IC 33-3-5-14.8].

WHEREFORE, the Petitioner prays for judicial review of the Board's Determination, that the same be vacated and set aside, and that an order be issued remanding this case to the Indiana Board of Tax Review for redetermination in accordance with the Order of this Court, and for all further just and proper relief [and further recite any additional or different relief, specifying the type and extent of relief requested].

/s/ _____
Attorney's Name, Address and
Indiana Attorney Number

I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

/s/ _____

These amendments shall take effect January 1, 2002.

The Clerk of this Court is directed to forward a copy of this order to the Clerk of each Circuit Court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court;

Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of December, 2001.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.

